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RHMCSUU/FBI WASHINGTON DC PRIORITY
RUEAHLA/HOMELAND SECURITY CENTER WASHINGTON DC PRIORITY
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SUBJECT: DOMINICAN BANKING: RECENT BANK FRAUD CONVICTIONS
CHALLENGE IMPUNITY

REF: SANTO DOMINGO 825

11. SUMMARY: Recent convictions in the Banco Intercontinental (Baninter) bank fraud case demonstrate improvement in the fight against impunity in the Dominican Republic, especially when viewed in the light of previous bank fraud prosecutions.
End Summary.

12. BACKGROUND: Fraudulent accounting and embezzlement were the leading causes of the failures in mid-2003 of three Dominican banks, with losses at the largest of the three, Baninter, now estimated at US \$2.7 billion, a figure roughly equivalent to 15 percent of the country's 2003 Gross Domestic Product (GDP). A decision to fully cover depositors, losses via Central Bank issued certificates of deposit more than doubled national debt in 2003-04, from the equivalent of about 26 percent of GDP to the equivalent of 57 percent of GDP, caused massive devaluation of the peso, and ultimately resulted in successive victories in the 2004 presidential and 2006 congressional and municipal elections for the political party then in opposition, the Dominican Liberation Party (PLD).

13. BANINTER - PROCEDURE, VERDICT, SENTENCING: The first and most spectacular of the 2003 bank failures, both for economic impact and the personalities involved, was the multi-billion dollar collapse of Baninter. Baninter executive Ramon ("Ramoncito") Baez Figueroa had played a prominent role in Dominican society; his family owned a majority share of leading newspaper "Listn Diario," he was reputed to be preparing to run for the presidency, and his generosity made him the darling of both social and philanthropic circles. Some of his largess came from a personal expense account at the bank, through which he siphoned roughly US \$38 million. Other indicted executives included two Bank vice-presidents, a prominent local attorney, and renowned US-Dominican entrepreneur Luis Alvarez Renta.

14. The prosecutorial history of the criminal case was tortuous, involving preventive detention, a judicial reduction of charges, and an appeal reinstating charges. Despite initial charges being lodged in 2003, the first

hearing by a trial court did not occur until April 3, 2006, and while defense counsel (Presidential drugs advisor Vincio "Vinchito" Castillo) utilized an obvious strategy of delay, the trial finished in a timely fashion, with verdicts, as follows, pronounced in November 2007:

-- Bank President Ramon Baez Figueroa) guilty of violating monetary and banking laws and acquitted of money laundering. Baez Figueroa was sentenced to ten years incarceration, indemnification of the government in the amount of 63 billion pesos (approx. US \$1.9 billion), forfeiture of various confiscated media outlets, and additional fines.

-- Bank Vice President Marcos Baez Cocco - guilty of violating monetary and banking laws and acquitted of money laundering. Sentenced, after two postponements, to eight years incarceration, indemnification of the government in the amount of 18.05 billion pesos (approx. US \$540 million), plus assumption of 75 percent of the indemnification originally assigned Baez Figueroa) and additional fines.

-- Bank Vice President Vivian Lubrano de Castillo) acquitted of all charges.

-- Bank Legal Counsel Jesus Maria Troncoso Ferrua) acquitted of all charges.

-- Entrepreneur Luis Alvarez Renta) guilty of the sole charge submitted: money laundering. Alvarez Renta was sentenced to ten years incarceration and various fines.

15. All convictions are on appeal by the defense and all of the convicted defendants remain free on bail. The prosecution is asking on appeal that: 1) Lubrano be declared

guilty of forgery, breach of trust and violation of the Monetary and Financial Law, which carries a penalty of 6 years incarceration; and 2) Baez Figueroa, Baez Cocco, and Alvarez Renta be sentenced to the statutory maximum (twenty years) -- though, interestingly, prosecutors are not contesting the money laundering acquittal.

16. BANINTER - PUBLIC REACTION, EMBASSY COMMENT: The verdicts were controversial and thought by many public commentators to be "politically expedient" and to "support impunity," in that: 1) some defendants were acquitted; 2) the convicted received less than the maximum sentence possible; and 3) the verdicts appeared internally inconsistent in terms of the money laundering convictions/acquittals. Embassy nevertheless views the result as a step forward, as this is the first time that significant sentences were given to upper class, socially prominent members of the banking sector.

17. COMPARISON WITH BANCREDITO, BANCO MERCANTIL: As was the case with Baninter, both Bancredito and Banco Mercantil were owned by prominent Dominican families and, again, as in Baninter, false accounts and sweetheart deals to other family-owned firms eventually forced the banks into bankruptcy in 2003. The total value of both of these banks prior to bankruptcy approached US \$1 billion. Following a lengthy trial, convictions in the Bancredito case, currently under appeal (by the defense for lack of evidence, by the prosecution to impose stiffer sentencing), were entered in August 2006 against:

-- Bank President and media mogul Manuel Arturo Pellerano Pena for falsification of public or authentic, commercial or banking writings, criminal association and manipulation of data and documents in prejudice of the Dominican state. Pellerano was sentenced to three years incarceration and a one million peso (approx. US \$30,000) fine.

-- Bank Vice President Juan Felipe Mendoza Gomez for falsification of public or authentic, commercial or banking writings, criminal association and manipulation of data and documents in prejudice of the Dominican state. Mendoza was likewise sentenced to three years incarceration and a one million peso (approx. US \$30,000) fine.

Civil society and press commentators have widely criticized these sentences as being too light.

As for Banco Mercantil, a controversial February 2006 Supreme Court decision has upheld only the prosecution of former bank president Andres Aybar Baez. A lower appeals court decision allowing the prosecution of nine other defendants was reversed and remanded. The case has not reached the trial phase.

18. NEXT STEPS/CONCLUSION: Although the appeals process is lengthy, it appears at first blush that the Embassy's work with local NGOs and the judicial sector to create a climate of accountability also created circumstances that allowed the legal process against all of the defendants to continue unimpeded. Embassy will continue to monitor all three cases mentioned - the Baninter and Bancredito appeals, as well as the Banco Mercantil trial. A final disposition that upholds or augments these sentences will be seen here as proof of a judicial shift away from impunity.
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